

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRANK “JOE” MENDEZ, an individual, on
behalf of himself and others similarly situated;
DONALD MAX KIMBALL, an individual, on
behalf of himself and others similarly situated;
and SIA GOULD, an individual, on behalf of
herself and others similarly situated,

Plaintiffs,

vs.

STEELSCAPE WASHINGTON, LLC, a
Washington limited liability company; and
STEELSCAPE, LLC, a foreign limited liability
company,

Defendants.

NO. 3:19-cv-05691-TSZ

**DECLARATION OF DONALD
W. HEYRICH IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
APPROVAL OF ATTORNEYS’
FEES, CASE COSTS, AND
ENHANCEMENT AWARDS**

NOTE ON MOTION CALENDAR:
January 5, 2022

I, Donald W. Heyrich, state and declare as follows:

1. I am one of the attorneys of record for Plaintiffs Frank “Joe” Mendez, Sia Gould and Donald Max Kimball, as well as the Settlement Class. I have personal knowledge of the matters set forth herein. If called to testify as to the assertions within this declaration, I could and would do so competently. I offer this declaration in support of

1 Plaintiffs' Motion for Approval of Attorneys' Fees, Case Costs, and Enhancement Awards.
 2 This declaration follows the Court's Order Granting Preliminary Approval of Class Action
 3 Settlement (Dkt. 36) and my declaration in support of the same (Dkt. 33).

4 2. Class Counsel represented Plaintiffs and the Settlement Class on a
 5 contingency fee basis. When taking on this employee wage case, my firm assumed the risk
 6 that we would never obtain any payment for the dedication of substantial attorney time,
 7 outlay of case costs, a potentially expensive and risky trial on the merits, and the lost
 8 opportunity costs due to the time we needed to devote to the case. Also, we
 9 acknowledged that class certification was not guaranteed, and we faced the risks of either
 10 losing a jury trial or the delay of recovery due to years of appellate review. For smaller
 11 sized plaintiffs' firms like ours, these risks are significant. Based on the results herein,
 12 Class Counsel is seeking the benchmark rate of 25%, and we are not otherwise seeking any
 13 enhancement based upon the significant recovery by members of the Settlement Class.

14 3. We dedicated significant time and resources toward achieving a beneficial
 15 outcome for Plaintiffs and the Settlement Class. The chart below identifies the attorneys
 16 who worked on behalf of Plaintiffs, assigns a reasonable hourly rate for each attorney, and
 17 sets forth the number of hours worked by each individual, the amount of fees for each
 18 individual, and the total fees for Class Counsel as a whole.

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Don Heyrich	41.7	\$685	\$28,564.50
Patrick Leo McGuigan	1.7	\$675	\$9,247.50
Erin Norgaard	67.0	\$595	\$39,865.00
Brian Dolman	232.20	\$490	\$113,778.00

TOTAL: \$191,455.00

24 4. The applied rates are based on a variety of factors, including among others,
 25 the experience, skill, and sophistication required for the types of legal services performed,
 26 and the experience, reputation and ability of the attorneys. In addition, the applied rates

1 take into account the reasonable hourly rates applied to similar cases in the Western
 2 District of Washington. In this context, more than 10 years ago, rates for attorneys in the
 3 Western District of Washington working on successful class action cases received
 4 approvals for rates in the range of \$415 to \$760 per hour. *See, Pelletz v. Weyerhaeuser Co.*,
 5 592 F.Supp.2d 1322, 1326 (W.D. Wash. 2009) (finding the prevailing rate for similarly
 6 situated attorneys in Seattle working on class actions is \$415 to \$760 per hour). More
 7 recently, Judge Settle of the Western District of Washington approved a rate of \$725 per
 8 hour to an attorney with similar experience as the undersigned and applied rates overall
 9 ranging from \$425 to \$725. *Joseph v. TrueBlue, Inc.*, Case No. 3:14-cv-05963-BHS (W.D.
 10 Wash.).

11 5. The lodestar calculation set forth above applies the hourly rate of \$685 for
 12 my time on the case. I am a founding partner of HKM Employment Attorneys LLP, I lead
 13 the class action group within the firm, and I possess extensive experience in employment
 14 litigation, collective actions and class actions. I worked on this case with attorneys Erin
 15 Norgaard and Brian Dolman. My professional background, including my substantial
 16 litigation and class action experience, were set forth in my prior declaration (Dkt. 33, ¶7-
 17 9), which is incorporated herein. I previously received court approval for an hourly rate of
 18 \$685 in a TCPA and CEMA case brought in this Court. *Gragg v. Orange Cab Co.*, Case
 19 No. 2:12-cv-00576-RSL (W.D. Wash.). I have also been approved at this same rate by the
 20 court in *McKiernan v. Act Fast Delivery of Washington*, No. 16-2-03389-0 SEA (King
 21 County Superior Court) and *Anderson v. Reed Hein & Associates, LLC*, Case No. 2:16-cv-
 22 00785-RSL (W.D. Wash.).

23 6. The lodestar calculation assigns a rate of \$675 for time worked by attorney
 24 Patrick Leo McGuigan, who is also a founding partner of the firm. Mr. McGuigan
 25 previously led the team staffed by attorneys Erin Norgaard and Brian Dolman, and he was
 26 instrumental in leading the initial work-up of this case. Besides his role as a founding and

1 managing partner of HKM, Mr. McGuigan also has experience with service as lead
 2 counsel for class action employment claims. In 2018, Mr. McGuigan received approval
 3 for an hourly rate of \$595 in a wage and hour class action entitled *Rogers v. Farrelli's*
 4 *Mgmt. Svcs., LLC*, Case No. 16-2-10554-8 KNT (King County Superior Court).

5 7. The lodestar calculation assigns a rate of \$595 for time worked by attorney
 6 Erin Norgaard, who is a managing partner of HKM's office in Seattle. Ms. Norgaard
 7 graduated *magna cum laude* from Seattle University School of Law in 2002. She
 8 possesses extensive jury trial and appellate experience after working the first 14 years of
 9 her career in the Criminal Division of the King County Prosecutor's Office. During her
 10 tenure, she was promoted to Senior Deputy Prosecuting Attorney and she served as a
 11 manager and Chair of the District Court Unit. Ms. Norgaard joined HKM in January 2017
 12 and has practiced plaintiff-side employment law ever since. I understand that Division II
 13 of the Washington Court of Appeals approved an hourly rate of \$375 for Ms. Norgaard in
 14 *Williams v. Washington Employment Security*, Case No. 49362-4-II (December 12, 2018),
 15 which involved an appeal of an award of unemployment insurance benefits to an individual
 16 plaintiff. However, since that time, Ms. Norgaard was promoted to managing partner in
 17 Seattle and is a go-to resource for trial strategy and preparation for teams within the firm. I
 18 am confident that her hourly rate of \$595 is on par with members of the Seattle
 19 employment law community as it relates to class action work like this case.

20 8. The lodestar calculation assigns a rate of \$490 for time worked by attorney
 21 Brian Dolman. Mr. Dolman graduated from Willamette University School of Law in
 22 2000, and he is a member in good standing of the bars in Washington and Oregon. Mr.
 23 Dolman joined HKM in November 2017 after working for the Law Offices of Judith A.
 24 Lonnquist, P.S., for nearly 6 years. As this Court is likely aware, Ms. Lonnquist is a pillar
 25 of the employment law community of Washington, who has substantial jury trial and
 26 appellate experience. Considering Mr. Dolman's trial and appellate experience with Ms.

1 Lonnquist, in addition to his other years of experience, Mr. Dolman's hourly rate of \$490
2 is both conservative and justified in this class action case. During the course of this
3 litigation, Mr. Dolman served as the primary contact for Plaintiffs, and he performed the
4 majority of hours dedicated to this case. I understand that courts have previously approved
5 Mr. Dolman's hourly rate in the amount of \$385 in *Bright v. Frank Russell Invs.*, Case No.
6 12-2-37570-4 SEA, (King County Superior Court), *Tupas v. Dep 't of Ecology*, Case No.
7 12-2-36393-5 (King County Superior Court), and *Hernandez v. City of Vancouver*, Case
8 No. C07-5539 BHS (W.D. Wash). However, this previously approved billing rate relates
9 to trial work performed in 2014 and Mr. Dolman's justified billing rate of \$490 per hour
10 has increased since that time.

11 9. In addition to the lodestar amount, HKM Employment Attorneys LLP also
12 incurred out-of-pocket litigation costs in the amount of \$9,378.99. These expenses
13 included filing fees, expenses for service of process, mediation fees, legal research costs,
14 and other similar expenses reasonable incurred in this prosecution of this case. My firm
15 seeks approval and reimbursement of these litigation expenses, which is contemplated in
16 the parties Settlement Agreement. Dkt. 33, Ex. 1, ¶ 6. A true and correct itemized cost
17 report is attached hereto as **Exhibit A**. In addition to the aforementioned litigation costs,
18 Plaintiffs and the Settlement Administrator will also seek at final approval reimbursement
19 of any settlement administration expenses. *Id.*, Ex. 1, ¶ 7. Similar to the estimate provided
20 by Mr. Shaffer, I do not anticipate that these settlement administration expenses will
21 approach the threshold of \$20,000 as provided in the Settlement Agreement. *Id.*

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1 I hereby declare under penalty of perjury that the forgoing is true and correct.

2 Executed this 5th day of January, 2022, at Seattle, Washington.

3 **HKM EMPLOYMENT ATTORNEYS LLP**

4
5 /s/ Donald W. Heyrich

6 Donald W. Heyrich, WSBA No. 23091

7 HKM Employment Attorneys LLP

8 600 Stewart Street, Suite 901

9 Seattle, WA 98101

10 Tel: (206) 838-2504

11 Email: dheyrich@hkm.com

12 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2022, I caused the foregoing document to be electronically filed with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the following attorneys of record.

Patrick M. Madden
Ryan D. Redekopp
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
patrick.madden@klgates.com
ryan.redekopp@klgates.com

DATED this 5th day of January, 2022.

/s/ Angela Tracy
Angela Tracy, Legal Assistant

EXHIBIT A

HKM Employment Attorneys LLP
Unbilled Charges
All Dates

Mendez et al., v. Steelscape	Date	Transaction Type	Vendor	Memo/Description	Amount
	08/31/2018	Billable Expense Charge		Westlaw	35.53
	10/04/2018	Billable Expense Charge		Mileage: Meet w/client in Kalama	149.33
	12/31/2018	Billable Expense Charge	Westlaw	Westlaw Allocations	27.34
	05/23/2019	Billable Expense Charge	Westlaw	Client Matter Expenses - Westlaw	12.70
	05/29/2019	Billable Expense Charge	Westlaw	Client Matter Expenses	10.19
	07/01/2019	Billable Expense Charge	Cowlitz County Superior Court	Filing Fee	240.00
	07/17/2019	Billable Expense Charge	Westlaw	Client Matter Expenses	53.78
	07/30/2019	Billable Expense Charge	ABC Legal	Process Service on Steelscape (Invoice No. 5467099.100)	122.00
	07/30/2019	Billable Expense Charge	ABC Legal	Process Service attempt on Steelscape (Invoice No. 5467103.100)	122.00
	07/06/2020	Billable Expense Charge	Wakeen & Associates Mediation Services, LLC	Frank Mendez Mediation Fees	3,140.00
	09/02/2020	Billable Expense Charge	Westlaw	Legal Research	27.09
	09/03/2020	Billable Expense Charge	Westlaw	Legal Research	44.38
	09/11/2020	Billable Expense Charge	Westlaw	Legal Research	134.16
	10/02/2020	Billable Expense Charge	Westlaw	Legal Research	77.05
	10/04/2020	Billable Expense Charge	Westlaw	Legal Research	21.63
	10/19/2020	Billable Expense Charge	Westlaw	Legal Research	25.05
	01/29/2021	Billable Expense Charge	Wakeen & Associates Mediation Services, LLC	Supplemental Mediation fees for Mendez et al v Steelscape	5,037.50
	08/17/2021	Billable Expense Charge	Westlaw	Legal Research	51.23
	08/31/2021	Billable Expense Charge	Westlaw	Legal Research	2.24
	09/02/2021	Billable Expense Charge	Westlaw	Legal Research	31.26
	09/29/2021	Billable Expense Charge	Westlaw	Legal Research	14.53
Total for Mendez et al., v. Steelscape					\$ 9,378.99